E.O.D. 7/3/02

IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

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TEXAS-EASTERN
BY

THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, ET AL. Plaintiffs	§	
V.	§	**No. 5:01CV344**
ABACUS, ET AL. Defendants	§	

ORDER

Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for Assignment of Duties to United States Magistrate Judges dated January 15, 1994, Defendant Fujitsu Computer Products of America, Inc.'s Motion for Limited Discovery Pursuant to Rule 26(d), or Alternatively, for an Order Scheduling a Rule 26(f) Conference (Docket Entry # 228) was referred to the Honorable Caroline M. Craven for the purposes of hearing and determining said motion. The Court, after reviewing the motion and the response, is of the opinion the motion should be **DENIED**.

I. DEFENDANT'S MOTION

Fujitsu Computer Products of America, Inc. ("Defendant") asserts this case involves a patent that expired before the First Amended Complaint was served on Defendant. Defendant further asserts it has no liability without prior constructive or actual notice, and therefore, Defendant seeks limited discovery on the issue of notice. Specifically, Defendant states limited discovery on the issue of notice may simplify the case and save judicial, and individual party, resources. Alternatively, Defendant seeks an Order directing Plaintiffs to immediately meet with Defendant under Rule 26(f).

The Massachusetts Institute of Technology and Electronics for Imaging, Inc. ("Plaintiffs")

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state Defendant sought agreement from Plaintiffs to allow discovery to be served on Plaintiffs addressing the notice issue, and Plaintiffs did not stipulate to such early discovery. Specifically, Plaintiffs assert the Rule 26(f) meeting will necessitate disclosures from both sides, and Plaintiffs plan to make uniform disclosures to all parties in the case. Plaintiffs assert holding a one-on-one Rule 26(f) meeting with Defendant is unworkable in light of the requirements of Rule 26(f), and Plaintiffs intend to conduct a collective Rule 26(f) meeting in this matter prior to the "meet and confer" deadline established by the Court. In addition, Plaintiffs argue Defendant has not shown good cause warranting expedited discovery in this matter.

II. DISCUSSION

Federal Rule of Civil Procedure 26(d) provides, in pertinent part, that except by order or agreement of the parties, "a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)." On June 19, 2002, the undersigned issued a Notice of Scheduling Conference and Proposed Deadlines for Docket Control Order Containing Discovery Order. *See* Docket Entry # 273. The Court set a scheduling conference in the above-referenced cause of action for August 14, 2002. The Court further ordered the parties to meet and confer in accordance with FED. R. CIV. P. 26(f) no later than August 1, 2002, fourteen days before the conference.

Due to the exceedingly large number of parties and counsel in the above-referenced suit and in an effort to establish a workable case management strategy for this case, the Court declines to grant Defendant's request for early discovery on the issue of notice. The scheduling conference and "meet and confer" deadline have been scheduled by the Court as early as possible, and the dates are far in advance of the October setting initially sought by Plaintiffs. The Court is of the opinion

July 3, 2002

Re: 5:01-cv-00344

Notice sent to:

F & Mailed

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Russell . Hill
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Richard E Bee
Damon Young
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Alan David Harrel
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